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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

WILLMUT GAS & OIL COMPANY, *Petitioner*

v.

UNITED GAS PIPE LINE COMPANY, ET AL., *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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OCTOBER TERM, 1957

No.

WILLMUT GAS & OIL COMPANY, *Petitioner*

v.

UNITED GAS PIPE LINE COMPANY, ET AL., *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

Petitioner is Willmut Gas & Oil Company (Willmut), complainant in the Chancery Court of Forrest County, Mississippi, suing on behalf of its consumers exclusively as to intrastate gas, and appellee in the Supreme Court of Mississippi. Respondents are United Gas Pipe Line Company (United), defendant in the Chancery Court and appellant in the Supreme Court of Mississippi, along with Fidelity & Casualty Company of New York, surety.

OPINIONS BELOW

There was no written opinion in the Chancery Court of Forrest County, only a decree. The opinion of the Supreme Court of Mississippi on original hearing, being the highest court wherein such decision may be rendered, is not yet officially reported, but appears in

97 So. 2d 530 (Appendix I hereto). The dissenting opinion of Mr. Justice Hall on overruling the Suggestion of Error is not officially reported, but appears in 100 So. 2d 609 (Appendix II hereto). The Opinion and Order No. 252 of the Federal Power Commission in Proceeding G-1158, 99 PUR (NS) 65, —— FPC ——, is Appendix III hereto.

JURISDICTION

The decree of the Chancellor was rendered upon November 23, 1956; the judgment of the Supreme Court of Mississippi was rendered on October 21, 1957; the suggestion of error was overruled on February 24, 1958; and the motion to stay mandate and to transmit segments of the original record was sustained on April 14, 1958. The statutory provisions conferring jurisdiction are 62 STAT. 929 (Title 28, U.S.C., Sec. 1257), in connection with the provisions of the Natural Gas Act, 52 STAT. 821, 15 U.S.C., Sec. 717, et seq. (the Act). See also SUPREME COURT RULE 19; said decision being probably "not in accord with applicable decisions of this Court" as precedently rendered and, with deference, also hereasto "has so far departed from the accepted and usual course of judicial proceedings * * * as to call for an exercise of this Court's power of supervision."

QUESTIONS PRESENTED

I. Does the Natural Gas Act deprive a competent State Court of all jurisdiction as to "one of the oldest forms of relief in our law"—the right of civil recovery by persons compelled to pay unreasonable or discriminatory rates to utilities, though a natural gas company? Does said Act so emasculate the common

law as that the State Courts may not even adjudge whether or not the subject matter, natural gas, is intrastate or interstate, and render relief accordingly; at all times, of course, subject to Federal review here? In short, has such State jurisdiction become extinct?

II. Does the Natural Gas Act, as to interstate gas, exclusively usurp, as to intrastate gas, State jurisdiction as to the admeasurement of liability of a utility for exaction of unlawful rates and preclude absolutely reparation, and reward the tort feasor with that which was unlawfully taken from the wronged consumer?

III. As to the southern segment of Willmut's system, does a contaminating factor of (possible) interstate gas of 1/40th of 1% of the entire gas mass free the tort feasor from civil responsibility when the tort feasor has consciously elected to situs the entire gas mass as intrastate, and there is present in the main, wherefrom the incursion was, more than ample intrastate to conform to *Peoples Natural Gas Co.* v. *Public Service Commission*, 270 U.S. 550, 70 L. ed. 726?

IV. When the dispatcher of United negligently fails to maintain the system pressure as contemplated and by an extraordinary cold snap, there is a possible intrusion of contaminating interstate gas, does such negligence, in virtue of the terms of the Natural Gas Act, acquit the tort feasor from State imposed liability for excessive rates exacted?

V. Does the doctrine of *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 100 L. ed. 373, and companion cases, apply where the contract between the parties makes rate fixation by arbitration

a condition precedent, and United thereasto arbitrarily breached its agreement?

VI. Was there not a contravention of both the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment when the Supreme Court of Mississippi assumed to reverse the Chancellor's decree in favor of Willmut and to render a final judgment against Willmut, conclusively depriving Willmut and its customers of a constitutional hearing by wrongfully assuming to know that of which it was judicially ignorant. We, as officers of the Court, assure the Court that Willmut could have shown that there was intrastate gas exclusively under Mississippi's sovereignty, wherefor alone suit was brought on behalf of the ultimate consumers and for which, as reflected by Judge Hall's opinion, recovery had; there being no dissent as to the right of recovery in this aspect through Willmut suing in this class action. *Federal Power Com.* v. *Interstate Nat. Gas Co.*, 331 U.S. 693, 91 L. ed. 1749; and *Independent Linen Service Co.* v. *Stone*, 192 Miss. 832, 6 So. 2d 110.

STATUTES INVOLVED

The pertinent provisions of the Natural Gas Act, 52 Stat. 821, 15 U.S.C. 717, et seq., are set out in Appendix IV hereto. The Fifth Amendment, the Tenth Amendment, and the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States are set out in Appendix IV hereto.

STATEMENT OF THE CASE

This suit was filed by Willmut, a local distributor of natural gas, on behalf of itself and its customers,

against United, averring the exaction of unlawful rates, as set out in paragraph three of its Complaint:

> "This suit concerns solely and only gas originated by United within the State of Mississippi, transported exclusively by United within the State of Mississippi and delivered exclusively by United for consumption by Willmut within the State of Mississippi, having herein naught to do with the interstate movement of natural gas delivered by United to Willmut * * *."

Willmut sought recovery upon the grounds of the exaction by United of all amounts unlawfully collected, praying thereasto that:

> "* * * this Court will fix a just, reasonable, non-preferential and non-discriminatory rate for the intrastate gas delivered by United to complainant and award a decree to complainant for the difference between said sum so fixed and the amount actually paid by said complainant to said United and that after deduction of appropriate costs, complainant be authorized and empowered to distribute to its consumers that whereto they are lawfully entitled, this court fixing the just and reasonable rate which should have been collected and would have been collected if United had complied with the law (of Mississippi) * * *".

The amount collected by United over the lawful State rate is estimated at One Million Dollars.

United primarily raised the question of jurisdiction of the State Court to grant *any relief*, being compelled to admit, for the purposes of the motion, that the gas sued for was exclusively intrastate. United's viewpoint, sustained by the State Supreme Court, is accurately reflected in the conclusion of the first ground to dismiss:

> "* * * primary jurisdiction rests in the Federal Power Commission, and this Court is without statutory or constitutional right or power to entertain the cause, or to undertake to hear and determine the same; Complainant has no rights, claims or causes or rights of action except under the Constitution and laws of the United States of America and, particularly, the Natural Gas Act, and for this court to in any wise assert jurisdiction over the subject matter of this suit would be to deprive Defendant of its property, rights and privileges under the Natural Gas Act without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States and also in violation of the commerce clause in Article One, Section 8 of said Constitution * * *."

And after repetition, United then filed an answer, traversing the facts, but only upon condition that the jurisdictional question had precedently been disposed of.

From 1943 until approximately January 1, 1947, United, pursuant to certificates issued by the Federal Power Commission under Section 7(c) of the Act, sold and delivered to Willmut gas produced primarily in Texas and Louisiana. United charged Willmut a rate of 25¢ per Mcf under an express contract (Exhibit "C" to Complaint), which was filed with the Federal Power Commission pursuant to Section 4(e) of the Act; but this rate expired expressly July 25, 1947.

In 1947, when United commenced to take gas from the Gwinville Field in Mississippi, it physically rearranged its pipeline system (save at East Jackson) so as to discontinue the flow of interstate gas from

Texas and Louisiana to Willmut, and replaced it with intrastate gas from the Gwinville, Mississippi field. As a result of these rearrangements, as to the northern segment of Willmut's system, no interstate gas was delivered to Willmut between July 25, 1947 and June 30, 1953; as to the southern segment, no interstate gas flowed to Willmut after approximately November 1, 1950 to June 30, 1953; but there were seven alleged incursions, totaling 29½ hours, with a physical content of not in excess of 1/40th of 1%.

Willmut and the City of Hattiesburg, Mississippi, filed a complaint with the Federal Power Commission (G-1158), seeking relief principally because of abandonment by United, under Section 7(b) of the Act, of its interstate facilities, claiming reparations and for an adjudication as to unreasonableness of past rates and fixation of a lawful rate. United challenged the jurisdiction of the Commission.

The Federal Power Commission, after full hearings, on June 1, 1953, issued Opinion and Order No. 252, (Appendix III hereto). The Opinion and Order found that United's rearrangement of its system constituted both a physical abandonment of facilities and an abandonment of service in interstate commerce rendered by means of such facilities, without the approval of the Commission, all in violation of Section 7(b) of the Natural Gas Act. It held that this illegal abandonment of facilities and service, and the substitution of intrastate service therefor did not deprive the Commission of jurisdiction to entertain the complaint. It ordered United "to restore and re-establish the facilitities and resume the interstate service as rendered to Willmut prior to February 6, 1947."

By the same Opinion and Order, the Commission found that "by its failure without lawful justification to make natural gas available to Willmut at the same rates or charges voluntarily established (for another customer), United is unlawfully subjecting Willmut to undue prejudice and disadvantage; and unlawfully granting undue preference and advantage (to that other customer) and that such practices by United are * * * unlawful, in violation of the provisions of the Act." The Commission, therefore, ordered United to reduce its rate to Willmut from 25¢ per Mcf to 17.5¢ per Mcf for domestic gas.

Willmut filed a bill, on behalf of itself and its customers for the recovery of excessive, discriminatory and unlawful rates charged by United for intrastate gas delivered to Willmut to June 30, 1953, the date on which United complied with Order No. 252 of the Commission. United filed a motion to dismiss the bill on the ground that the Federal Power Commission had exclusive jurisdiction over the subject matter. The Chancery Court overruled this motion. On an interlocutory appeal, the Supreme Court of Mississippi held:

> "The jurisdiction of the Federal Power Commission having attached to *all natural gas sold to Willmut*, there is *no residual jurisdiction* for independent court action. The *local component (of gas) lost its intrastate character* and there *remained no power* in the courts to apply the common law of the State.
>
> "The chancery court *erred* in not sustaining the motion to dismiss the bill *for want of jurisdiction to determine the issues presented*, and its order is therefore reversed. On interlocutory appeal we ordinarily remand the case to the trial court, but

> in this case *no additional or amended pleading* could enable Willmut to maintain its suit. It would serve no purpose to remand the cause, and final judgment will be rendered here dismissing the bill." (Emphasis ours unless otherwise noted)

So holding, the Court reversed the order of the Chancery Court and entered final decree dismissing the bill. Thereupon Willmut filed a Suggestion of Error, sharply calling to the Court's attention that it confined the recovery for itself and its customers exclusively to intrastate gas and had been denied, through the dismissal on the merits, a Constitutional hearing.

REASONS WHY THE WRIT SHOULD BE GRANTED

I.

State Common Law Right of Recovery as to Intrastate Commerce Not Destroyed by Natural Gas Act.

1. The monumental question here is narrow, but most far-reaching, primarily as phrased by Mississippi's Court:

> "The Chancery Court erred in not sustaining the motion to dismiss the bill for *want of jurisdiction to determine the issues presented*, * * *."

If Mississippi's Court had no jurisdiction to determine whether this gas was interstate vel non and adjudge thereasto, subject to review here, then Chapter 372, *Laws of Mississippi, 1956*, as to natural gas, and all its precedent statutes regulating intrastate matters contravened the Federal Constitution. Such State sovereignty as to intrastate movement has been uniformly sustained since the "Railroad Commission

Cases," (*Stone* v. *Farmers Loan & Trust Co., et al.*), 116 U.S. 307-356, 29 L. ed. 636, up to *Chicago, Milwaukee, St. Paul & Pacific R. Co.* v. *Illinois,* 78 S. Ct. 304, 2 L. ed. 2d 292. Where such vital issues as to State and National power exist, this Court must interpose to preserve the appropriate balance. *Detroit* v. *Murray Corp.,* ——U.S. ——, 78 S. Ct. 458, 2 L. ed. 2d 441.

At common law, until altered by administrative regulation, the right of recovery for an unlawful exaction by a utility was thus commented upon by Mr. Justice Frankfurter in *Montana-Dakota Utilities Co.* v. *Northwestern P.S.C.,* 341 U.S. 246, 95 L. ed. 912:

> "The right of civil recovery by persons compelled to pay unreasonable or discriminatory rates to common carriers is one of the oldest forms of relief in our law. * * *"

And four members of this Court thought, under the circumstances there delineated, that:

> "* * * And even if the effect of awarding relief is ultimately to benefit Montana-Dakota (Willmut), it certainly has a better claim to the exacted funds than Northwestern (United). * * *"

As commented by Circuit Judge Prettyman in *U. S.* v. *Davidson Transfer & Storage Company, Inc.,* U.S.C.A. No. 14123, decided April 24, 1958:

> "Absent a statute creating a special forum, a shipper's common-law rights were enforceable in court upon a complaint seeking reparations for unreasonable charges collected by a carrier. * * * Arizona Grocery v. Atchison, Topeka & Santa Fe Ry., supra; Texas & Pac. Ry. v. Abilene Cotton Oil Co., 204 U.S. 426, 436, 51 L. Ed. 553, 27 S. Ct. 350 (1907); Lewis-Simas-Jones Co. v. Southern Pac. Co., 283 U.S. 654, 660, 75 L. Ed. 1333, 51 S.

Ct. 592 (1931); Interstate Commerce Comm'n v. Cincinnati, New Orleans & T. P. Ry., 167 U.S. 479, 505-506, 42 L. Ed. 243, 17 S. Ct. 896 (1897); Interstate Commerce Comm'n v. Baltimore & Ohio R. R., 145 U.S. 263, 36 L. Ed. 699, 12 S. Ct. 844 (1892); Dow v. Beidelman, 125 U.S. 680, 687, 31 L. Ed. 841, 8 S. Ct. 1028 (1888); Western Union Tel. Co. v. Call Pub. Co., 181 U.S. 92, 102, 45 L. Ed. 765, 21 S. Ct. 561 (1901); Mitchell Coal Co. v. Pennsylvania R. R., 230 U.S. 247, 264, 57 L. Ed. 1472, 33 S. Ct. 916 (1912); Tift v. Southern Ry., 138 Fed. 753, 759 (C.C.W.D. Ga. 1905), aff'd. 206 U.S. 428, 51 L. Ed. 1124, 27 S. Ct. 709 (1907); Smith v. Chicago & N.W. Ry., 49 Wis. 443, 5 N.W. 240 (1880); West Virginia Transportation Co. v. Sweetzer, 25 W. Va. 434, 444 et seq. (1885); BEALE & WYMAN, RAILROAD RATE REGULATION 12-15 (1906); II SHARFMAN, INTERSTATE COMMERCE COMMISSION 393-406 (1931). * * *"

2. The State Court primarily assumes to follow, but, with deference, has totally misconceived the *Montana-Dakota* Case, and to destroy, upon the merits, by the Act the right of civil recovery. The *Montana-Dakota* Case, with deference, blasts the State Court's opinion. Thereasto this Court was unanimous. Note that the State Court said that the Chancery Court had no "jurisdiction to *determine the issues presented*;" that is, was this intrastate gas or interstate gas, and if intrastate, had United wrongfully charged the consumers 25¢ per Mcf?

A. Mississippi's Court palpably became confused as to the jurisdiction to hear and the power to decide on the merits after jurisdiction was taken; (*Montana Dakota Util. Co. v. Northwestern P.S.C.*, supra, p. 917):

> "As frequently happens where jurisdiction depends on subject matter, the question whether jurisdiction exists has been confused with the question whether the complaint states a cause of action. * * *"

This Court held, in virtue of the discredited claim of Montana-Dakota, that Montana-Dakota properly sued in the District Court, notwithstanding there had been no administrative fixation. Compare *United States* v. *Western Pacific R. Co.*, 352 U.S. 59, 1 L. ed. 2d 126. So, therefore, the Chancery Court, under this decision, had jurisdiction to decide on the subject matter.

Mr. Justice Jackson further said, *Montana-Dakota*, p. 249:

> "We think there was power in the District Court to decide whether the claims so grounded constitute a cause of action maintainable in federal court and, if so, whether it is sustained on the facts. We think a direction to dismiss for want of jurisdiction was error and that it should not stand as a precedent. However, it is clear that the reason underlying the Court of Appeals' decision was that no federal cause of action was established. If this was correct, we should sustain the judgment of reversal, though on other grounds than those stated. * * *"

B. The State Court fundamentally overlooked that the *Montana-Dakota* decision held that there was primary Federal jurisdiction, in virtue of a claim made under the Federal statute, the Justice saying:

> "* * * The Judicial Code, in vesting jurisdiction in the District Courts, *does not create causes of action*, but *only confers jurisdiction to adjudicate those arising from other sources*

> which satisfy its limiting provisions. Petitioner asserted a cause of action under the Power Act. To determine whether that claim is well founded, the District Court *must take jurisdiction*, whether its ultimate resolution is to be in the affirmative or the negative. * * *"

Thereunder the primary jurisdiction of the State Court was untouched, precisely as this Court held as to the jurisdiction of the District Court, and no provision of Mississippi's Constitution conferring jurisdiction on the Chancery Court was in any way affected.

After holding justiciable, Mr. Justice Jackson further declared; p. 251:

> "* * * Statutory reasonableness is an abstract quality represented by an area rather than a pinpoint. * * * To reduce the abstract concept of reasonableness to concrete expression in dollars and cents is the function of the Commission. * * *"

Primarily, before the Act, this function was judicial, and so was in Mississippi at the time of the suit; the difference being that where the matter was administrative under the Act, the Commission had to act in accordance with its statutory authority, while in Mississippi the Court could act just as Mr. Justice Brewer held it could do in *Western Union Teleg. Co. v. Call Pub. Co.*, 181 U.S. 92, 46 L. ed. 765.

As to what were the actual facts as to this intrastate gas, the State Court having held that the Chancery court could not pass on it, is in a measure, therefore, here irrevelant on this question of jurisdiction; but Willmut filed a Suggestion of Error, which was noticed by Mississippi's Court and overruled; and, as a part

thereof, attempted to bring before that Court all of the evidence in G-1158. These facts will be, for the Court's guidance, hereinafter epitomized to show the fundamental necessity for certiorari herein.

Montana-Dakota properly failed, not for want of jurisdiction, but on the merits. In the case at bar, suing on behalf of its customers, Willmut ten years ago impetrated G-1158 before the Commission upon the ground inter alia that there was an unlawful discrimination as at July 25, 1947 by reason of United giving to a former affiliate a 17.5¢ rate, while refusing to appraise, and arbitrarily collecting 25¢ from the customers through Willmut. *Central State Elec. Co.* v. *Muscatine*, 324 U.S. 138, 89 L. ed. 801. The Federal Power Commission in G-1158 made an unequivocal administrative finding and order in Willmut's favor and against United.

Under *Cromwell* v. *Sac County*, 96 U.S. 51, 24 L. ed. 681, if the cause of action be regarded as identical, there has been in favor of Willmut and against United an adjudication; but if the cause of action be different, there is equally effective a collateral estoppel after five years litigation.

So Willmut brings to this Court, with deference, that made requisite by the majority in the *Montana-Dakota* case, having legitimately obtained precedently from the Commission that which this Court then held could not be referred to the Commission. Compare *United States* v. *T.I.M.E.*, 252 F. 2d 178 (1958); *United States* v. *Davidson Transfer & Storage Co., Inc.*, supra.

C. Montana-Dakota, as pointed out by the Federal Power Commission in its intervention, recouped its

losses from its customers; yet four members of this Court thought that even then it should have prevailed by reason of the tort against it. When the Court of Appeals for the Fifth Circuit was distributing that impounded as a result of the litigation in *Federal Power Commission* v. *Interstate Natural Gas Co.*, 331 U.S. 693, 91 L. ed. 1749; 336 U.S. 577, 93 L. ed. 895, the Commission took the position (which in large measure influenced the bringing of this suit) that the ultimate consumers of the public utilities had to receive the benefits. What the position of the Commission would have been in the *Montana-Dakota* case had Montana-Dakota not reimbursed itself is not a matter of record and thereasto a decision should be in the public interest.

D. Unquestionably, this 50% excess so collected by United from the ultimate consumers was an unlawful collection by it under the unanimous opinion, as we understand it, in the *Montana-Dakota* case; Mr. Justice Frankfurter declaring:

> "The Power Act is explicit that *any* 'rate or charge that is not just and reasonable is *hereby declared to be unlawful.*' * * *"

The Act says, "*all*"—no exceptions.

This million dollars so unlawfully in the hands of United was substantially a trust fund, whereasto United was without equitable rights; these inhered in the consumers. Compare *Talcott* v. *Pine Grove*, Fed. Cas. 13735; s.c. *Pine Grove* v. *Talcott*, 86 U.S. 666, 22 L. ed. 227:

> "* * * The Judicial personage, the corporation, created by the sovereign power expressly for this

sole purpose and no other, is in the most strict, technical and unqualified sense *but its trustee.*

"* * * The neglect of the smallest of these duties in which the community is interested will be enforced by the public writ of mandamus."

Note s.p. *Acme Brick Co.* v. *Arkansas Public Service Com.*, 25 L.W. 2399, (Ark. Sup. Ct. 1957).

The consumers, for whom this action is, were entitled under Mississippi's law to this Mississippi gas from Gwinville at a just and reasonable rate, non-discriminatory. This movement was not in excess of 100 miles and yet for it United was charging 25¢, while transporting foreign gas to Jackson hundreds of miles at 17.5¢. As to all rates other than those at East Jackson, the State had jurisdiction in its Court to simply try an intrastate transaction whereasto the customers were entitled to relief. To compel Willmut and the customers to have a full-dress rate hearing, involving the entire United system, would, with deference, have contravened the rule in *Ex Parte Young*, 209 U.S. 123, 52 L. ed. 714.

3. The State Court assumes to apply the *Connecticut Light & Power Co.* v. *Federal Power Commission*, 324 U.S. 515, 89 L. ed. 1150, which, with deference, (1) as to jurisdiction of the Chancery Court, is not apposite; but, (2) if there were, as Willmut contends, naught but intrastate gas, is directly controlling contra. Therein this Court said:

"* * * Two days before its effective date and frankly for the *purpose of avoiding Federal regulation* the Company rearranged its operation with intent *to cut every connection and discontinue every facility* whose continued operation would

render it subject to the Federal Power Commission's control. The Commission conceded in its opinion and the Government admits here the Company's right to do so. * * *"

4. The State Court assumes to apply *Pennsylvania Water & Power Co.* v. *Federal Power Commission*, 343 U.S. 414, 72 S. Ct. 843, 96 L. ed. 1042. Hereasto, with deference, as to jurisdiction, it is not apposite. There was a unit operation of hydro and steam power interconnected and the rise and fall of the Susquehanna River regulated; but here, if we may examine the facts, after the Gwinville Field was connected up and gas moved southward through Hattiesburg into the Mobile 16-inch line, it was not intended that there should be any backflow of interstate gas (if it were such) from the 16-inch main, United's Superintendent testifying:

"* * * that was not a normal operating condition on December 25, 1948, when gas flowed from the 16 inch back into the 8-inch. That was strictly an abnormal condition."

5. *Wisconsin-Michigan Power Co.* v. *Federal Power Commission*, 7 Cir., 197 F. 2d 472, is next relied upon by the State Court. Thereto should be added, *Wisconsin Power & Light Co.* v. *F.P.C.* (USCA, D.C.), 201 F. 2d 183, 186, wherefrom it affirmatively appears that when the four municipalities received exclusively Wisconsin power, the Commission had no jurisdiction. Compare the position of the Commission that the State's power was paramount; *North Dakota* v. *Federal Power Commission*, (CA 8), 247 F. 2d 173, where the factual set-up, if it might be considered, is strikingly similar. Compare *City of Hastings* v. *Federal Power Commission*, (CA, D.C.), 221 F. 2d 31,

cert. den. 349 U.S. 920, —— L. ed. ——; *City of Hastings* v. *Kansas-Nebraska Natural Gas Co., Inc.*, (CA 8), 226 F. 2d 413; *Humble Oil & Refining Co.* v. *Texas & Pacific Ry. Co.*, —— Tex. ——, 289 S.W. 2d 547.

6. Note *Peoples Natural Gas Co.* v. *Public Service Commission*, supra. This decision Mississippi's Court disregarded, following opposite counsel, when thereasto they said:

> "The People's Case has not been officially overruled, but it has been positively repudiated and particularly so since the passage of the Natural Gas Act. There has been no necessity on the part of the Supreme Court to officially overrule the People's Case, for since the passage of said Natural Gas Act, it is no longer applicable, as Congress has now exercised its paramount power."

It was, nevertheless, followed by Mississippi's Court in *Southern Bus Lines, Inc.* v. *Amalgamated Ass'n.*, 205 Miss. 354, 38 So. 2d 765, 771.

7. Under Mississippi's decision, *Steele* v. *Palmer*, 41 Miss. 88, and *Porterfield* v. *Butler*, 47 Miss. 165, 170, a judgment rendered without and beyond the issues is a nullity, and the fundamental Constitutional issue here is: Has Mississippi lost through the Act the power to prescribe a public policy as to strictly intrastate gas and, in virtue of that, to compel tort feasors to make good unlawful exactions? Compare especially *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 88 L. ed. 333, 349, and *Panhandle Eastern Pipe Line Co.* v. *Public Service Com.*, 332 U.S. 507, 92 L. ed. 128, 139.

8. The effect of the Act is exclusively through an implied repeal and unless the Act makes this recovery

from the tort feasor unlawful, it is preserved. Compare *Texas & P.R. Co.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426, 51 L. ed. 553.

9. Most probably it was not within the Congressional intent to interfere with this local tort liability. *United Construction Workers* v. *Laburnum Construction Co.*, 347 U.S. 656, 98 L. ed. 1025.

10. As definitely indicating the trend toward rectification, compare *U. S.* v. *Davidson Transfer & Storage Company, Inc.*, supra, and *U. S.* v. *T.I.M.E., Inc.*, supra.

There is no difficult question of proration between the interstate and the intrastate movement. In this case, each is separate and distinct, or at least separable, and when thus separable, no question of the National law superseding the State law can arise; it is obligatory upon this Court, if these may be reconciled and made operative, so thus to do. Compare *Peoples Natural Gas Co.* v. *Public Service Commission*, supra.

It might be that the jurisdiction of the Federal Power Commission to prescribe future rates for sales of gas in interstate commerce carries with it the ancillary jurisdiction to regulate the rates for sales in intrastate commerce; (Note *King* v. *United States*, 344 U.S. 254, 97 L. ed. 301; and *Houston, E. & W. T. R. Co.* v. *United States*, 234 U.S. 342, 58 L. ed. 1341); but the law looks with disfavor upon forfeitures.

The property of these 12,000 gas consumers aggregated One Million Dollars. There was no requirement that the State rate be published. The interstate rate, if applicable, had expired July 25, 1947 and the total deviation from the alleged lawful rate

(assuming to have so been) would have equalled as to each customer per month only a deviation amounting to $.0003, which, with deference, is certainly *de minimis* and wholly inadequate to acquit a tort feasor from liability. We allocate 99.98% to State power and 1/40th of 1% to the National sovereignty.

Had United sought and obtained from the Federal Power Commission permission to abandon its interstate service to Petitioner and then substituted intrastate service therefor, there can be no doubt that its sales in intrastate commerce would have been regulable by the State of Mississippi. Can the result be different simply because it possibly illegally abandoned interstate service and substituted intrastate service therefor? The answer must be no. To answer yes is to say that United may profit from its own wrongdoing—that by the device of attempting to violate the Federal law, it may gain exemption from the application of State law.

Surely when Congress had in mind a specific chasm that had to be bridged to vouchsafe complete and satisfactory regulation, it did not, by thus bridging, divest the states of that sovereignty requisite and necessary to protect the consumers of gas within their boundaries. In short, Congress never struck down this state power where, as here, it could be exercised without impinging in the slightest upon that which Congress did, especially when United assumed to act under and in accordance with the law of Mississippi and to set at naught the Natural Gas Act. When cast, it certainly is not lawful for United to use the Natural Gas Act as a sword with which to take from those wronged by it that which the State law gave them.

It is submitted that before the utility may wrongfully appropriate the excess over the just and reasonable rate for the service rendered, there must be an express statutory provision thus clearly donating. It is in contravention of the Constitution to vest the property rights of these gas consumers under Mississippi's law in the wrongdoing utility. Compare *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U.S. 55, 76, 81 L. ed. 510, 521.

II.

State Jurisdiction to Adjudge Whether Intrastate Gas Upon Which a Utility Has Exacted Excessive Charges Must Remain, Under the Constitution, With the Courts of Mississippi, Subject to Review Here.

The State Court, as to strictly intrastate gas, has unconstitutionally burdened the Federal judiciary and the administrative agencies of the United States by this opinion with the obligation administratively and judicially to determine fundamental questions which are strictly local and wherewith the Federal Government has naught to do. The State Court has held that the petitioner and its customers might not, in a State Court of competent jurisdiction, file a common law count against the utility in the form shown infra (pp. 23-24); but, with deference, the original complaint is so thus specifically limited and, without amendment, appropriately asserted only local jurisdiction. The growing burden of increasing Federal litigation would be monumentally augmented if this decision be allowed to stand.

A. As *to all gas in the Natchez segment* (which was separate and apart from that in the Southern segment):

(1) There never was between July 25, 1947 and June 30, 1953 a single molecule of extra-Mississippi gas within the northern segment of Willmut's system. The rights therein have been lawfully individualized by *Independent Linen Service Co. v. Stone*, supra, applying substantially the doctrine of *Federal Power Commission* v. *Interstate Natural Gas Co.*, supra, that each of the individual users were severally entitled to separate reparations originating through Willmut.

(2) Where the sole movement was intrastate without contaminating interstate intrusion, exclusive jurisdiction remained in the State and the Act had absolutely no application under its express terms. Section 717, Title 15 *U.S.C.A.*, p. 177. The Supreme Court of Mississippi could not construe the Act so as to include thereunder that which the Constitution and Congress expressly prohibited.

(3) To demonstrate that there was in this Northern segment only intrastate gas without the admixture of a single molecule of interstate gas, we have:

(a) The under-oath declaration of United in Docket No. G-1158:

> "8. * * * However, Respondent shows that except for the town or community of East Jackson in Rankin County, Mississippi, the natural gas delivered and sold to Willmut has been for a long time and is now wholly produced transported and consumed within the State of Mississippi."

(b) Adverting to the findings of the Commission, Opinion No. 252, it is said:

> "* * * United effected a discontinuance of the flow of interstate gas from the Jackson-Mobile line into the Jackson-Hattiesburg line except through

> the connecting link at or near the southern terminus of the later line. * * *"

The finding of the Commission as to this Northern segment is unequivocal and positive.

(c) United, in Docket G-1158, put on the stand its General Pipe Line Superintendent for the Eastern Division, who swore that there was no interstate gas in this segment (quoted herein), and is presently in this Court. When United intended to rely upon the record in G-1158, the entire record, including the evidence, should have been put in. Compare *Pate* v. *Evans*, Miss. , 97 So. 2d 737; *True-Hixon Lbr. Co.* v. *Thorn*, 171 Miss. 783, 158 So. 909.

(d) Note a judicial admission before the Commission to that effect, as to Docket G-708, where United constructed the line to Philadelphia without a certificate of convenience, having assured the Commission that no interstate gas could be therein:

> "As shown in the lower insert on the map attached, we propose to cut the present Jackson-Hattiesburg 8" line at the point where the Gwinville tap line crosses same and connect it to the Gwinville tap with a check valve installed on the line serving Hattiesburg which will permit the passage of gas south toward Hattiesburg and prevent any gas flow north towards Jackson."

(e) Commissioner Draper, in dissenting, (Opinion and Order No. 252, App. IV), declared:

> "The fact that these transactions were formerly interstate is not disputed. The fact that their conversion to an intrastate status by United is a fait accomplis is not disputed. * * *"

(f) The Commission, in its Opinion No. 252, said (pp. 6, 9, App. IV):

> "And this conclusion is not affected by the *incidental fact* that United has replaced that service by intrastate service in a manner satisfactory to it. * * *"

Compare *Missouri ex rel. Southwestern Teleph. Co.* v. *Missouri Public Service Com.*, 262 U.S. 276, 67 L. ed. 981.

(g) The Opinion and Order in G-1158 controls, when in conflict, United's claims thereasto. *Wilbur* v. *United States of America ex rel. Chestatee Pyrites & Chemical Corp.*, 288 U.S. 97, 77 L. ed. 638.

The evidence before the Commission could not have been considered by the Court for it thus expressly declared "want of jurisdiction to determine the issues presented."

B. *As to the gas in the Southern Segment:*

(1) From November 1, 1950 to June 30, 1953, no molecule of interstate gas was likewise in the southern segment; it being assumed that the southward movement would have purged within thirty days. United consciously selected the intrastate performance and having so thus done, it would have been a deprivation of property for the State Court to integrate a liability admeasured by a different law. *Hartford Accident & Indemnity Co.* v. *Delta & Pine Land Co.*, 292 U.S. 143, 78 L. ed. 1178.

(2) The period from July 25, 1947 to October 3, 1950 presents two different aspects:

(a) Christmas Day, 1948. There was a normal movement of intrastate gas until suddenly and unexpectedly

a cold wave appeared at Hattiesburg, with reference to which the dispatcher of gas made a faux pas in not appropriately and properly opening valves to augment the local supply. The construction of the system was that this gas should move South from Gwinville into the 16-inch main at Hattiesburg and such was the normal movement; but as said by Superintendent Poindexter of United, (quoted supra, p. 12) the intrusion from the 16-inch main was not in any way normal.

So, may United, furnishing, in accordance with its election, intrastate gas and thereby incurring a tort liability, be relieved of that tort liability by a further negligent act? With deference, negligence cannot appropriately juggle the interplay of State and National power.

(b) The other occasions upon which there was a possible intrusion of contaminating gas.

United may not thus voluntarily shift its responsibility from local to national by a voluntary act. The potential amount of interstate gas was so small as to be within the rule *de minimis*.

When United thus declared that all of this gas was delivered as intrastate, with a corresponding responsibility, there was no intention of the Natural Gas Act to import its obligations to regulate that whereasto State sovereignty had always been adequate and complete.

III.

Mississippi's Court Declined to Apply Peoples Natural Gas Co. v. Public Service Commission, 270 U.S. 550, 70 L. ed. 726

The Supreme Court of Mississippi overlooked the fundamental factor that the gas in the 16-inch Mobile line, wherefrom this contaminating invasion is alleged to have occurred, contained sufficient intrastate gas

to make good the entire invasion. Into this 16-inch Mobile line, there was a 12-inch line that ran from Gwinville and discharged thereinto Gwinville gas. Likewise it can be shown that into the same line, there was a movement of local gas from the Soso Field and possibly other fields; but unmindful of the Federal law, Mississippi's Court undertook to directly overrule that which was held unanimously by this Court in *Peoples Natural Gas Co.* v. *Public Service Commission*, supra:

> "As respects the Pennsylvania gas we think it must be held to be in intrastate commerce only. Feeding it into the same pipelines with the West Virginia gas works no change in this regard. Of course after the commingling the two are undistinguishable. But the proportions of both in the mixture are known and that of either readily may be withdrawn without affecting the transportation or sale of the rest. So, for all practical purposes the two are separable and neither affects the character of the business as to the other. * * *"

United States v. *Public Utilities Commission*, 345 U.S. 295, 97 L. ed. 1020.

Willmut fails to find any decision of this Court wherein the common law liability in favor of those consuming intrastate gas and charged therefor an exorbitant rate were deprived of the right of recovery by the Act. Its superseding effect was strictly limited to that which was requisite to make the Act effectual. *Texas & P.R. Co.* v. *Abilene Cotton Oil Co.*, supra.

IV.

Mississippi's Court Fundamentally Failed to Recognize United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332, 100 L. ed. 373, and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 347, 100 L. ed. 388, When Willmut and United Had an Express Contract Requiring Rate Fixation After July 25, 1947, by Arbitration.

1. In *Memphis Light, Gas & Water Div.* v. *Federal Power Com.*, 250 F. 2d 402, now pending on certiorari, 2 L. ed. 2d 420, Circuit Judge Washington said:

> "* * * *Doubtless the contracting parties could have agreed on a third party to arbitrate a dispute when the seller sought to raise its price.* But the Federal Power Commission has not been given that arbitration function by statute."

2. Note Exhibit "H-3" produced by United as a predicate for the Court's action. This was an exhibit to United's pleading and it is bound thereby:

> "With reference to the *agreement of August 20, 1943*, between the undersigned as 'Seller' and you as 'Buyer', relating to the sale and purchase of gas for resale and distribution as specifically set forth therein, under date of May 7, 1946, we wrote you a letter calling your attention to the provision of Article VII of said contract specifying the price to be paid for all gas sold and delivered thereunder during the period ending July 25, 1947, and to the further provision that the price to be paid during the succeeding 5-year period *shall be determined by agreement between the parties*, and in which we proposed to extend during the 5-year period beginning July 25, 1947, the rate that is in effect on July 24, 1947. You replied by letter dated June 21, 1946, in which you advised, in effect, *that you would not accept the proposed extension agreement.*

"The above *contract provides for arbitration in the event the parties should fail to agree upon a price for any five year period subsequent to July 25, 1947.* However, since the *Federal Power Commission presently has jurisdiction* over the price to be paid for gas sold under the above contract and since the price which you are now paying us and which we have proposed to be extended for the 5 year period beginning July 25, 1947, has been approved by the Federal Power Commission for sale to you and to other similar customers in the rate zone comprising our Jackson District, and which price has *in all other cases been extended by mutual agreement* with the respective buyers and copies of such agreements have heretofore been duly filed with the Commission, *we deem it to be useless as well as a waste of time, money and effort to resort to arbitration under the circumstances. Accordingly, we intend to continue in effect during said 5-year period beginning July 25, 1947, for all gas sold and delivered thereunder, the same price that is in effect on July 24, 1947.*"

3. The Contract between United and Willmut, on file with the Commission as Rate Schedule FPC No. 73, specifically provided that after July 25, 1947, the rate should be fixed by arbitration thus:

"VII. * * * The price to be paid by Buyer to Seller for each one thousand (1,000) cubic feet of gas sold and delivered to Buyer hereunder during each succeeding five (5) year period of this agreement, after July 25, 1947, shall be determined by agreement between the parties not less than twelve (12) months prior to the beginning of each of such five (5) year periods and failing so to agree the determination of the price shall be submitted to arbitration as hereinafter in this Section VII provided. * * *"

4. Under *United Gas Pipe Line Company* v. *Mobile Gas Service Corp.*, supra, the Court encouraged definite contracts and dispensed largely with uniformity.

5. This question as to consent vel non under the Act is presently on review in Cause No. 13,683, Court of Appeals, District of Columbia, and the point has been decided in favor of Willmut.

6. In the Supreme Court of Mississippi, United said:

> "In a hit and miss fashion, Willmut brings up the alleged failure to arbitrate. Certainly Willmut well knows that this clause is inoperative not only before the Federal Power Commission but also with the Court. Machine Products Company v. Prarie Lodge, Miss. , 94 So. 2d. 344. Suggestion of Error Overruled, June 3, 1947."

With deference, this is a misciation for here there was a contract wherein the price might vary, but was to be fixed by appraisal. Compare *Hamilton* v. *Liverpool & L. & G. Ins. Co.*, 136 U.S. 242, 34 L. ed. 419, 10 S. Ct. 945, followed and applied in *Home Ins. Co.* v. *Watts*, Miss. , 91 So. 2d. 722, 725; and *M. T. Reed Const. Co.* v. *Virginia Metal Products Corp.*, CA 5, 213 F. 2d 337.

Here, United flatly denied this right to thus fix by agreement or appraisal the price. This was a contract violation and did not in any way give title to United to the excess over the lawful rate.

The effect of the agreement to fix the price for five-year periods by arbitration is directly drawn in issue and should be decided. There is a dispute on the merits hereasto between Willmut and United, but until jurisdiction is vouchsafed, no decisions may be.

We have noted with profound interest the argument presented by the Solicitor General on behalf of these gas companies in Causes Nos. 691, 694, and 695, October Term 1957. With the utmost deference, thereto we desire to make challenge, especially on behalf of this small distributor. The relationship between United and Willmut, as shown before the Commission, has been one of continued hostility and litigation. If there be one thing certain, it is that, circumstanced as Willmut was, it would not have vested in United the right to fix, as its agent before the Commission, the rate at which Willmut would be compelled to do business.

V.

There was a Violation of the Fourteenth Amendment, Both The Due Process and the Equal Protection Clauses.

There was a violation of the Fourteenth Amendment, both the Due Process and the Equal Protection Clauses, in a double aspect:

(1) Most disturbing is the divestiture by this opinion of all State jurisdiction quoad issues of this character. United assumed to strike down and did strike down all resort by local parties to local Courts for rectification of local wrongs, by compelling resort to Federal sovereignty, unduly thus burdening the Federal Power Commission and the Federal Courts; but more especially, those in Mississippi, who had local demands of the kind and character here under discussion; they could not go to the local Courts.

United propounded to the State Supreme Court as its prime postulate:

> "The interstate sale of gas to Willmut, a distributor, by United, a natural gas company, is under the exclusive jurisdiction of the Federal

> Power Commission; and neither the Federal Power Commission nor any Court can determine the lawfulness of past rates, or grant damages or reparations in connection therewith."

The State Court accepted it 100%, and excised from Mississippi's Constitution jurisdiction of that segment as to intrastate commerce and denied to Willmut the right to file in any local court of competent jurisdiction a complaint in words and figures as follows:

> "Willmut says that the gas whereasto recovery is herein sought was originated by United at the Gwinville field in Mississippi. Therefrom said gas moved from the well site through a pipe line to Point B on said appendix, in a 12-inch main, commingled with other Mississippi gas, there being in said main no extra-State gas whatsoever. At said Point B, said stream was severed into two segments; one of said segments entered through a separate valve, the 8-inch Hattiesburg-Jackson line, which had been severed at a point south of this point of entry and then moved northward in said 8-inch main to Point A at Jackson, unmingled with any gas having origin outside of Mississippi; and thence moved from said Point A to Philadelphia, Mississippi through a 6-inch main, which had been constructed by United after an application under the Natural Gas Act for a Certificate of Convenience and Necessity had been withdrawn, to the knowledge and with the consent of the Federal Power Commission. Said gas, wherefor demand is hereunder lawfully made, is that gas moving from this unmixed stream between Points A and B and there consumed in local distribution systems, wholly intrastate."

This form of complaint as to the North end was specifically submitted to the State Supreme Court as

being appropriate for the determination of Mississippi's Court. (Suggestion of Error, p. 17, It was denied. The same form substantially as to the South end was propounded to the State Court and the right to file each was specifically denied, save thereasto Mr. Justice Hall did dissent. In short, all litigation of this character was extirpated by Mississippi's decision consciously.

This decision is fundamentally contrary to all enactments of Congress limiting Federal jurisdiction. If it be that the State Court can thus expand it, there will be a period of uncertainty until final rectification, with untold wrong thus wrought. The fundamental right of a local citizen to try local questions in local courts has been fundamentally subverted.

(2) Assuming local jurisdiction, the rights of Willmut and its customers have been crucified. So as to preserve the One Million Dollars for Willmut and its customers, the exercise of the exclusive jurisdiction of this Court is as requisite as it was in *City of Detroit* v. *Murray Corporation*, supra.

In the Chancery Court the decree entered as to motions and demurrers was in favor of Willmut, leaving the facts as to intrastate gas against interstate gas wholly undetermined, Willmut suing exclusively for intrastate gas alone.

The State Court, after appropriately adjudging the Federal question, assumed to dismiss Willmut's suit on the merits, without having afforded Willmut any opportunity whatsoever to present to the Court any proof, basing its opinion upon want of jurisdiction—lack of power to decide. The sole predicate whereon the Court assumed therefor to rely were the exhibits

annexed to the motion of United, whereasto Willmut had no part—the Court assuming to say that there was no jurisdiction, which would mandatorily have required a dismissal for want of jurisdiction and not on the merits.

How Mississippi's Court could judicially know what Willmut had power to prove passes our comprehension. Under Section 146 of the *Constitution of Mississippi*, its jurisdiction was that of a court of appeals, bound by the record received, whereto no additional fact not therein appearing could be considered. It could not rely upon personal knowledge—speculation. Compare *Gillespie* v. *Doty*, 160 Miss. 684, 135 So. 211. As controlling, note that said by Mr. Justice Cardozo in *Shapleigh* v. *Mier*, 299 U.S. 468, 81 L. ed. 355, 113 A.L.R. 253, 257:

> "* * * judicial notice and judicial knowledge are far from being one. The law is not so vain as to make pretense of their identity. To the contrary, a court that is left without knowledge of a fact after exploring to the full every channel of information must needs decide against the litigant who counts upon the fact as an essential of his claim. De non apparentibus et de non existentibus eadem est ratio."

See also Annotation, "Distinction between judicial notice and judicial knowledge," 113 *A.L.R.* 258; 20 *Am. Jur.*, "Evidence," Sec. 21, p. 52; 31 *C.J.S.*, "Evidence", Sec. 11, p. 516.

The exclusive import of the State Court's opinion was that the Chancery Court was without jurisdiction, but assuming, arguendo, jurisdiction, it could not turn Willmut and its customers out of court as to whether

the gas was local or not without allowing them an opportunity to be heard.

In this connection, Willmut was not permitted to introduce any of the competent evidence showing the local Court's jurisdiction, including a collateral estoppel as to the unlawfulness of the exacted rate. The judgment in Mississippi's Court denying Willmut's recovery because of that which was assumed to be contained in an exhibit, which was not introduced in evidence—offered in evidence—and to which Willmut had no opportunity to object, constituted a condemnation without a hearing. Compare *National Union of Marine Cooks* v. *Arnold*, 348 U.S. 37, 99 L. ed. 46, approved in *Michel* v. *Louisiana*, 350 U.S. 91, 100 L. ed. 83, 94, applying the prior decision of *Hovey* v. *Elliott*, 167 U.S. 409, 42 L. ed. 215, 219.

That attempted by Mississippi's Court was to take from Willmut and its customers a property right upon a judicial speculation as to what would be introduced in evidence when and if the case were heard on the merits. There was no possibility of Mississippi's Court anticipating at this juncture when the plea, which was sustained, was on its face wholly inadequate to warrant any such awful consequences whereby the tort feasor took from those wronged the entire One Million Dollars, and the right of countless Mississippi citizens to resort to their local Courts, according to their local Constitution, for rectification of local wrongs; nay, more, the right to be heard at home as to that unlawfully there done; thereasto they might not be compelled to go to Washington for rectification.

Willmut did naught to lose its right to introduce its evidence and yet it is denied that hearing just as ef-

fectively as was done in the *Hovey* Case, supra, where there had been a refusal. This denial, where there has been no contempt, but a ready conformity by Willmut to every judicial requirement, raises even the more sharply the Federal question and vouchsafes the protection, for Willmut has not been heard. It was not until the opinion was herein rendered that there was any intimation that there would be a transgression of the Federal Constitution, but there was and has been; and, so being, the law is well settled that when the Federal questions are first raised in the appellate court, and before that date there was no opportunity to there as to assign them an assignment at that time is appropriate and proper. *Saunders* v. *Shaw*, 244 U.S. 317, 61 L. ed. 1163; *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U.S. 673, 74 L. ed. 1107; and *Fleming* v. *Fleming*, 264 U.S. 29, 68 L. ed. 547. Compare *Herndon* v. *State of Georgia*, 295 U.S. 441, 79 L. ed. 1530. Of course, as to the construction of the Act, the Federal question had been raised, but this further invasion did not occur until the rendition of this opinion.

Furthermore, where the opinion here, without any hearing from Willmut, assumed, contrary to the facts which Willmut can, with deference, produce, to deny by an absolute dismissal the right to a hearing, then in and of itself the opinion became and was a deprivation of property and a denial of the equal protection of the law.

That which Mississippi's Court in substance has done is to render a decree against Willmut and its customers that they take nothing on the merits in virtue of a pleading raising only a question of jurisdiction.

Our postulate is that having the burden of proving that there was intrastate gas, Willmut was entitled thereon to introduce all relevant evidence, but when, having won before the Chancellor, the Supreme Court assumed to say that there was no evidence in Willmut's possession that would demonstrate a right to recover without having given Willmut the right to introduce that which it had, the State Court's opinion became not a judicial decision, but a flagrant invasion of the Constitution, whereasto rectification is requisite here.

CONCLUSION

Willmut is a small Mississippi distributor of natural gas, dependent upon United, by contract, for its requirements until August, 1962; and its relations have been beclouded by litigation. Before determining to come to this Court by reason of the expense involved, the small Company had to count the cost and has so done; and has made, through its counsel, an examination of the subjects requisite to justify its action.

The questions are serious and far from simple, and the presentation has been as concise as was reasonably possible.

This Court is the sole tribunal wherethrough rectification may be thus wrought and it is respectfully submitted that certiorari should be granted because of the nature of the litigation and the fundamental questions presented.

This decision has already been broadcast as being "of interest and importance" in 249 F. 2d—No. 5, (Jan. 27, 1958), under "Judicial Highlights." Herein alone may the symmetry of the State-National system be preserved, and we dare to prophesy that unless this

Court takes the requisite "stitch in time", it will be called upon definitely for the "other nine".

It may be contended that Section 146 of *Mississippi's Constitution* as interpreted violates Petitioner's Constitutional rights, so as to authorize an appeal. If so, prayer therefor is hereby respectfully made.

Respectfully submitted,

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